

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RICKY SCHAAF,

Plaintiff,

ORDER

v.

14-cv-205-jdp

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

Plaintiff Ricky Schaaf sought judicial review of a final decision of the Acting Commissioner of Social Security finding him not disabled within the meaning of the Social Security Act. After Schaaf filed a well-supported motion for summary judgment, Dkt. 7 and Dkt. 8, the parties jointly moved to remand the case to the commissioner, Dkt. 15. The court remanded the case, Dkt. 16, and Schaaf now seeks attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d)(1)(B), Dkt. 18. The fee motion is mostly routine, but Schaaf seeks reimbursement at an hourly rate higher than the statutory default rate of \$125. An award of fees is warranted, and Schaaf demonstrates that his counsel's rate of \$188.75 is reasonable because it reflects an appropriate adjustment for the cost of living and it more closely approximates the market value of his attorney's work. The Commissioner does not oppose Schaaf's motion. Dkt. 22. The court will grant the request for fees and costs of \$5,988.86.

The EAJA provides "reasonable fees and expenses of attorneys" to the prevailing party in court cases brought against the Commissioner. 28 U.S.C. § 2412(b). The EAJA caps the rate for attorney fees at \$125 per hour, unless the court determines that either an increase in the cost of living or a "special factor" justifies a higher rate. 28 U.S.C. § 2412(d)(2)(A); *see Mathews-Sheets v. Astrue*, 653 F.3d 560, 563 (7th Cir. 2011). It is Schaaf's burden to prove that his attorney is entitled to a rate of \$188.75 per hour, totaling \$5,988.86 with costs.

Schaaf pursues both the cost of living and the “special factor” exceptions to the capped rate, arguing that there has been an increase in the cost of living and that there is limited availability of qualified attorneys for social security proceedings. Dkt. 19, at 4-7. Schaaf cites *Wonders v. Shalala*, 822 F. Supp. 1345 (E.D. Wis. 1993), and cost of living data from the Department of Labor to support the proposition that the relevant market rate for legal services in 1993 was \$150 per hour and that the cost of legal services has risen since then. Further, Schaaf avers that he “shopped for the best available attorney at the lowest reasonable fee” before retaining his attorney, Dkt. 19-3, who is highly qualified in disability law.

IT IS ORDERED that:

1. Plaintiff Ricky Schaaf is awarded his costs and reasonable attorney fees in the amount of \$5,988.86, consistent with this Order.

Entered June 23, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge